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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/449,185	11/24/1999	LARRY G. MICHALEWICZ	062891.0342	5978

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EXAMINER

NGUYEN, BRIAN D

ART UNIT	PAPER NUMBER
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2661

DATE MAILED: 09/17/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/449,185

Applicant(s)

MICHALEWICZ ET AL.

Examiner

Brian D Nguyen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,10-24,26-30,32-39 and 43-59 is/are rejected.
- 7) ☒ Claim(s) 7-9,25,31 and 40-42 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claims 10-12, 14-27, 32-33, 43-45, 50-52 and 55-59 are objected to because of the following informalities:

Claim 10, "the payload section" in line 6 seems to refer back to "a first payload section" in line 3-4. If this is true, it is suggested to change "the payload section" to ---the first payload section---.

Claim 14, "the remainder aggregate data segment" in line 3 seems to refer back to "a remainder aggregate segment" recited in line 8 of claim 13. If this is true, it is suggested to change "a remainder aggregate segment" recited in line 8 of claim 13 to ---a remainder aggregate data segment---.

Claim 15, "one or more devices" in lines 7-8 seems to refer back to "one or more devices" recited in lines 3-4. If this is true, it is suggested to change "one or more devices" in lines 7-8 to ---the one or more devices---.

Claim 17 has the same problem as claim 10.

Claim 22, "a plurality of telephone devices" in line 4 seems to refer back to "a plurality of telephone devices" recited in line 2. If this is true, it is suggested to change "a plurality of telephone devices" in line 4 to ---the plurality of telephone devices ---.

Claim 26 has the same problem as claim 10.

Claim 32 has the same problem as claim 10.

Claim 43 has the same problem as claim 10.

Claim 50 has the same problem as claim 10.

Claim 55 has the same problem as claim 22.

Claim 58 has the same problem as claim 10.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-3, 10-23, 26-29, 32-36, 43-56, and 58-59 are rejected under 35 U.S.C. 102(e) as being anticipated by Caves (6,266,343).

Regarding claims 1-3, Caves discloses a method for enabling communication between a plurality of telephone devices comprising receiving incoming media packets from each telephone device; dividing payload section into data segments; and constructing an outgoing payload portion for one or more of the telephone devices (see col. 3, lines 3-15; col. 4, lines 13-31).

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Regarding claims 10-14, Caves discloses dividing a payload section into a complete segment, full segments of equal size, and a remainder segment; and constructing outgoing payload sections by linking the remainder segment, full segments, and a portion of another segment (see figures 2 & 4 and col. 4, lines 13-31 where data packets from user 1 and user 2 are segmented and outgoing payload sections are constructed).

Regarding claims 15-21, claim 15-21 are method claims that have substantially all the limitations of method claims 1-2, 10-14. Therefore, they are subject to the same rejection.

Regarding claims 22-23, claims 22-23 are apparatus claims that have substantially all the limitation of the respective method claims 1-2. Therefore, they are subject to the same rejection.

Regarding claims 26-27, claims 26-27 are apparatus claims that have substantially all the limitation of the respective method claims 10-12. Therefore, they are subject to the same rejection.

Regarding claims 28-29, claims 28-29 are network claims that have substantially all the limitation of the respective apparatus claims 22-23. Therefore, they are subject to the same rejection.

Regarding claims 32-33, claims 32-33 are network claims that have substantially all the limitation of the respective apparatus claims 26-27. Therefore, they are subject to the same rejection.

Regarding claims 34-36, claims 34-36 are computer claims that have substantially all the limitation of the respective method claims 1-3. Therefore, they are subject to the same rejection.

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Regarding claims 43-47, claims 43-47 are computer claims that have substantially all the limitation of the respective method claims 10-14. Therefore, they are subject to the same rejection.

Regarding claims 48-54, claims 48-54 are computer claims that have substantially all the limitations of the respective method claims 15-21. Therefore, they are subject to the same rejection.

Regarding claims 55-56, claims 55-56 are apparatus claims that have substantially all the limitation of the respective apparatus claims 22-24. Therefore, they are subject to the same rejection.

Regarding claims 58-59, claims 58-59 are apparatus claims that have substantially all the limitations of the respective apparatus claims 26-27. Therefore, they are subject to the same rejection.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 24, 30, and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caves (6,266,343).

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Regarding claim 24, Caves discloses all the claimed subject matter as described in previous paragraph except for the use of G.711. However, to use encoder G.711 or any other standards is a matter of choice in order to meet specific needs.

Regarding claim 30, claim 30 is a network claim that has substantially all the limitation of the respective apparatus claim 24. Therefore, it is subject to the same rejection.

Regarding claim 57, claim 57 is an apparatus claim that has substantially all the limitation of the respective method claim 24. Therefore, it is subject to the same rejection.

6. Claims 4-6 and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caves (6,266,343) in view of Robinett et al (6,351,471).

Regarding claims 4-6, Caves discloses all the claimed subject matter as described in previous paragraph except for inserting silence placeholders to fill a time interval during which no incoming media packets are received from a particular telephone device. However, Robinett discloses filling a time interval during which no incoming media packets are received from a particular telephone device with silence placeholders (see col. 5, lines 48-50 and col. 10, lines 27-44). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to fill the time interval with placeholders as taught by Robinett in the system of Caves in order to maintain the bit rate and prevent buffer underflow.

Regarding claims 37-39, claims 37-39 are computer claims that have substantially all the limitation of the respective method claims 4-6. Therefore, they are subject to the same rejection.

Allowable Subject Matter

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7. Claims 7-9, 25, 31, and 40-42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Turner et al (6,438,137), Togo et al (6,175,573), Usukura et al (6,574,1910), and Settle et al (6,233,253).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian D Nguyen whose telephone number is (703) 305-5133. The examiner can normally be reached on 7:30-6:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Olms can be reached on (703) 305-4703. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0377.


Brian Nguyen
9/6/03